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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

AIDS HEALTHCARE FOUNDATION, Petitioner and Appellant, v. CITY OF LOS ANGELES, et al., Respondents; CH PALLADIUM, LLC, et al., Real Parties in Interest and Respondents.	B292816 (Los Angeles County Super. Ct. No. BS161771)

APPEAL from a judgment of the Superior Court of Los Angeles County. Yvette M. Palazuelos, Judge; and Amy D. Hogue, Judge. Affirmed.

The Silverstein Law Firm, Robert P. Silverstein, and Daniel E. Wright for Petitioner and Appellant.

Michael N. Feuer, City Attorney, Terry Kaufmann Macias, Managing Senior Assistant City Attorney, John W. Fox and Ernesto Velazquez, Deputy City Attorneys; Best & Krieger, Christi Hogin, and Trevor L. Rusin for Respondents City of Los Angeles and City of Los Angeles City Council.

Goldfarb & Lipman, Thomas Webber and James T. Diamond for Respondents CRA/LA and CRA/LA Governing Board.

Latham & Watkins, James L. Arnone Benjamin J. Hanelin, and Jennifer K. Roy for Real Parties in Interest and Respondents CH Palladium, LLC and CH Palladium Holdings, LLC.

* * * * * *

This appeal challenges the decision by the City of Los Angeles (the City) to amend the City's General Plan to facilitate the conversion of the Hollywood Palladium theater and two of its parking lots into a residential, commercial and entertainment complex with a restored Palladium as its key feature. One of the neighboring property owners opposed the project throughout the City's administrative hearings on the project and sought a writ of mandamus to stop the project. As did the trial court, we conclude that the City did not prejudicially err in amending its General Plan, in approving the project, or in affording the neighboring property owner due process. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The proposed project*

The Palladium theatre has been a historic concert venue located in the heart of Hollywood ever since Frank Sinatra crooned there on its opening night in 1940. The Palladium faces Sunset Boulevard, and is flanked by two parking lots—one alongside the theatre (and to the west) that abuts Sunset Boulevard and Argyle Avenue (the Sunset parcel) and one behind the theatre (and to the north) that abuts Selma Avenue and El Centro Avenue (the Selma parcel). The city block comprising the theater and parking lots is located two-tenths of a mile from the Hollywood/Vine Red Line Metro station and half a mile from the Hollywood Freeway.

CH Palladium, LLC and CH Palladium Holdings, LLC (collectively, the Developer) sought to transform the site into a residential, commercial and entertainment hub by (1) converting the two parking lots into two, 28-story towers subdivided into a total of 731 condominiums, (2) preserving and restoring the Palladium theater as a concert venue in partnership with the Palladium's operator, and (3) building 24,000 square feet of ground level retail and restaurant space as well as 33,800 square feet of landscaped courtyards open to the public (collectively, the project).

B. *Project's incompatibility with existing zoning*

1. *Sunset parcel*

Prior to the Developer's efforts in this case, the Sunset parcel had the following zoning classification: C4-2-D Regional Center Commercial. Each portion of this zoning classification

defines the types and density of permissible development on that parcel.

The term "Regional Center Commercial" refers to the land use designation assigned to the parcel by the City's General Plan and by the Hollywood Community Plan, which is the local subset of the General Plan encompassing the Sunset parcel. As its name suggests, "Regional Center" parcels are "intended to [serve as] focal points of regional commerce, identity and activity." They are to be put to a "diversity of uses," including, as pertinent here, "retail commercial malls . . . [and] major entertainment and cultural facilities and supporting services"; are often adjacent to "hub[s] of regional bus or rail transit"; and are "typically high-density places."

The term "C4" is the zone assigned to the parcel. The City has 36 zoning classifications. (L.A. Mun. Code, § 12.04.A.) As pertinent here, any development on a parcel zoned C4 must have a "minimum lot area per dwelling unit" of 400 square feet. (*Id.* at §§ 12.16.C.3 [adopting "lot area requirements" for R4 zone], 12.11.C.4 [lot area requirement for R4 zone].) This metric limits the density of development by tying the number of dwelling units to the size of the underlying lot.

The term "2" is the height district assigned to the parcel. Each parcel in the City is assigned to a height district that, using one of various metrics, caps the height of development on parcels in that district. (L.A. Mun. Code, § 12.21.1.) For parcels in height district "2," the floor to area ratio for any development cannot exceed 6 to 1—that is, the height of any development cannot exceed six times the total floor area of the parcel. (*Id.*, § 12.21.1.A.2.) This metric operates to limit the density of

development by tying the "buildable area" to the "lot size" of the parcel. (*Id.*, § 12.03 [defining "floor area ratio"].)

The term "D" means that the parcel is subject to an ordinance that has fixed a "maximum height or floor area ratio less than that ordinarily permitted" in height district "2". (L.A. Mun. Code, § 12.32.G.4.(a).) With respect to the Sunset parcel, a 1990 City ordinance imposed a so-called "D limitation" that caps the floor to area ratio at 3 to 1 (instead of the 6 to 1 maximum that, as noted above, is otherwise the maximum in height district "2").

Two additional attributes of the Sunset parcel do not appear in its zoning classification. First, because the parcel is classified with a C4 zone *and* with a Regional Center Commercial land use designation, the permissible uses of the parcel include not only those uses spelled out in the C4 zone but also those in the R5 zone. (L.A. Mun. Code, § 12.22.A.18(a).) In a May 2000 memorandum, the City's Zoning Administrator ruled that R5's "lot area requirements" also apply to such parcels. R5 only requires a "minimum lot area per dwelling unit" of 200 square feet (*Id.*, § 12.12.C.4), which is one-half the minimum lot area normally applicable to C4 parcels. Second, the parcel is subject to an additional overlay—namely, it lies within the Hollywood Redevelopment Plan area, which means the City may authorize a floor to area ratio of 6 to 1 if the parcel is sufficiently adjacent to mass transit outlets and satisfies other redevelopment objectives.

2. *Selma parcel*

Prior to the Developer's efforts in this case, the Selma parcel had the following zoning classification: [Q]C4-1VL Commercial Manufacturing.

The term "Commercial Manufacturing" refers to the land use designation. As its name suggests, "Commercial Manufacturing" parcels are intended for industrial expansion and do not generally permit residential development.

The term "C4" is, as noted above, the applicable zone.

The Selma parcel should not be classified as *both* "Commercial Manufacturing" *and* "C4." Such a classification violates the City's General Plan because C4 is *not* one of the permissible zones for parcels with a land use of "Commercial Manufacturing." Such a classification is also at odds with the land use designations surrounding the Selma parcel—the map of those designations vividly illustrates that the Selma parcel is an island of Commercial Manufacturing in a sea of Regional Center Commercial. This island of Commercial Manufacturing is a remnant from a past era when the entire area housed the industry that supported movie studios.

The term "1VL" is the height district assigned to the parcel. "VL" is short for "very limited," and prohibits any construction that exceeds three stories or 45 feet in height. (L.A. Mun. Code, § 12.21.1.A.1.)

The term "[Q]" means that the parcel is subject to an ordinance that indefinitely provides that the parcel may "not be utilized for all the uses ordinarily permitted in a particular zone classification." (L.A. Mun. Code, § 12.32.G.2(a), 3.) With respect to the Selma parcel, the same 1990 ordinance affecting the Sunset parcel imposed a so-called "[Q] condition" that prohibits all residential uses on the Selma parcel.

Like the Sunset parcel, the Selma parcel is also located in the Hollywood Redevelopment Plan area.

3. *Separate parcels*

Prior to the Developer's efforts in this case, the Palladium theatre, the Sunset parcel and the Selma parcel were three separate parcels for purposes of zoning.

C. *Developer applies to City for approval of project and modification of existing zoning*

To facilitate the project, the Developer filed several applications with the City.

In July 2013, the Developer applied to the City for a vesting tentative tract map (tract map). Such a map was necessary in order to (1) merge all three separate parcels into a single parcel, and then (2) re-subdivide the air space in the to-be-built towers so that individual condominiums could be sold. (L.A. Mun. Code, § 17.01.A.1, 4(a), 4(d).) The tract map would be conditioned on the City Council's amendment of the General Plan to alter the zoning classification of the various parcels making up the project site.

In October 2014, the Developer applied to the City for three zoning changes (which, if adopted, would satisfy the conditions of the tract map). First, the Developer asked the City Council to amend its General Plan to change the land use designation for the Selma parcel from "Commercial Manufacturing" to "Regional Center Commercial." Second, the Developer asked the City Council to enact an ordinance that would eliminate the D limitation on the Sunset parcel and the [Q] condition on the Selma parcel. Lastly, the Developer asked the City to re-zone the entire, consolidated parcel for the project as [Q]C4-2D Regional Center Commercial, with a new "[Q]" condition requiring the

Developer to, among other things, nominate the Palladium theater as a historical-cultural monument.[1]

C. *Administrative proceedings*

1. *Before the City Planning Department*

On April 15, 2015, the Director of Planning and a hearing officer conducted a joint hearing on the Developer's applications. The Director of Planning, whom the Municipal Code designates as the City's "Advisory Agency" for certain purposes (L.A. Mun. Code, § 17.03), was conducting a hearing on (1) whether to certify the environmental impact report, which the City had issued in its final form on March 31, 2015, and (2) whether to approve the conditional tract map. The hearing officer was conducting a hearing on what to recommend to the City Council regarding the re-zoning of the parcels comprising the project.

Plaintiff AIDS Healthcare Foundation (the Foundation), which leases space in two buildings adjacent to the project site and which owns a building a few blocks away, appeared at the hearing and voiced objections to the tract map, the re-zoning proposal, and the environmental impact report.

In August 2015, the Advisory Agency issued a 135-page determination conditionally approving the tract map and finding

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1 In full, the sought-after zoning classification was [T][Q]C4-2D-SN Regional Center Commercial. The term "[T]" refers to a tentative classification requiring that certain development criteria be complied with before the map is recorded. (L.A. Mun. Code, § 12.32.G.1(a), (b).) The term "SN" refers to the signage supplemental use district. Neither of these components of the project site's new zoning is at issue in this appeal.

The Developer also sought additional non-zoning entitlements, but they too are not at issue in this appeal.

that the "benefits for the project justify adoption of the project and certification of the completed [final] [environmental impact report]." The Advisory Agency did not, however, expressly certify the environmental impact report. In November 2015, the hearing officer issued a report recommending that (1) the City Planning Commission (the Commission) certify the environmental impact report for the project, and (2) the City Council amend the General Plan and re-zone the parcels comprising the project.

2. *Before the City Planning Commission*

The Foundation appealed the Advisory Agency's conditional approval of the tract map to the Commission.

This teed up the following issues for the Commission's consideration: (1) whether to grant or deny the Foundation's appeal of the Advisory Agency's conditional approval of the tract map; (2) whether to certify the environmental impact report; and (3) whether to recommend a General Plan amendment and re-zoning of the parcels comprising the project to the City Council.

The Commission held two hearings—one in mid-November 2015 and, after the Commission continued the hearing to give the Foundation the opportunity to respond to a recently released errata to the environmental impact report, a second in mid-December 2015.

During the first hearing and at the beginning of the continued hearing, four of the Commission's seven members disclosed that they had had ex parte communications with one or more of the parties. Specifically, with respect to communications with the Developer, (1) Commissioner Dana Perlman disclosed that he had met with one of the Developer's architects and that they discussed the "general location" and "historic[al] context" of the Palladium, but not any of the "issues . . . in the appeals"; (2)

Commissioner Renee Dake Wilson disclosed that she had met with two of the Developer's architects at the project site and that they had "discussed the building" (and, in particular, the "grade change," "the materials" and the "grid architecture on the building") and walked around the site; (3) Commissioner David Ambroz disclosed that he had met with the Developer to "discuss[] the project generally," and he had expressed his concerns about "affordable housing and/or work-force housing," electrical vehicle parking, solar energy, and preservation of the Palladium; and (4) Commissioner Richard Katz disclosed that he had met with the Developer over breakfast and that they had discussed "the project [and] jobs-housing balance."[2] In response to questions, Commissioners Perlman and Ambroz stated that "nothing" in their ex parte communications would have "any impact" in their "decision making"; the other two commissioners were never asked that question.

At the conclusion of the December 2015 meeting, the Commission voted unanimously to (1) deny the Foundation's appeal of the conditionally approved tract map and sustain the Advisory Agency's decision regarding the project,[3] (2) certify the

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2 Commissioner Perlman disclosed that he had "one discussion" with the Foundation's attorney regarding the continuance of the hearing and Commissioner Ambroz disclosed that he had a "meeting with" representatives from another neighbor opposing the project.

3 More specifically, the Commission denied in part and granted in part the Foundation's appeal. The appeal was granted in part to the extent it challenged the Developer's alternative

environmental impact report, and (3) recommend that the City Council amend the General Plan and re-zone the project site.

3. *Before the City Council*

The Foundation appealed to the City Council.

a. Hearing before Planning & Land Use Management Subcommittee (Subcommittee)

The Subcommittee is made up of five of the City Council's members. After the Foundation submitted further written objections, the Subcommittee heard the Foundation's appeal in mid-March 2016. After hearing comments from the Foundation and then from the City Planner, the Subcommittee recommended that the City Council (1) deny the Foundation's appeal of the conditionally approved tract map and sustain the Advisory Agency's decision, (2) certify the environmental impact report, and (3) amend the General Plan and re-zone the project site.

b. Full City Council

The Foundation submitted further written objections to the City Council.

In late March 2016, the City Council at its regular meeting and without entertaining further oral comments on the project, voted to adopt the recommendations of the Subcommittee to deny the Foundation's appeal of the tract map and to certify the environmental impact report. The City then enacted an ordinance that amended the General Plan and re-zoned the project site, thereby making the tract map approval no longer conditional.

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proposal to build a hotel on the project site, but that is a moot issue because the Developer withdrew that proposal.

4. *Before CRA/LA*

In May 2016, the entity (the CRA/LA) that oversees the Hollywood Redevelopment Plan (1) made the requisite findings that the project was sufficiently adjacent to mass transit outlets and satisfied other redevelopment objectives, and (2) entered into a Land Use Owner Participation Agreement with the Developer governing the project. These actions rendered a floor to area ratio of 6 to 1 lawful, and thus authorized the two, 28-story high rises.

II. Procedural Background

A. *The petition for a writ of mandate*

In April 2016, the Foundation filed a petition for a writ of mandamus challenging the City's and redevelopment entity's approvals of the project; the petition named the Developer as the real party in interest.

In the operative First Amended Complaint, the Foundation challenged, in pertinent part, (1) the City Council's amendment of the General Plan and re-zoning of the Sunset and Selma parcels on the grounds that (a) a parcel-specific amendment to the General Plan violated the City's Charter, (b) the Zoning Administrator's ruling that parcels with a Regional Center Commercial land use designation and a C4 zone could use the "lot area requirements" for R5 parcels was invalid, and (c) the City Council improperly removed the D limitation and [Q] condition previously attached to the Sunset and Selma parcels, (2) the City Council's certification of the environmental impact report *after* the Advisory Agency had already approved the tract map, and (3) the totality of the City's administrative review process as violating the Foundation's right to procedural due process.

B. *Cross-motions for judgment on the pleadings*

The Foundation, the City and the Developer filed cross-motions for judgment on the pleadings regarding the Foundation's claims that (1) the City Council's parcel-specific amendment to the General Plan violated the City Charter, and (2) the Zoning Administrator's interpretation of Los Angeles Municipal Code section 12.22.A.18(a) was incorrect. After full briefing and a hearing, the court ruled in favor of the City and the Developer on those arguments.[4]

C. *Trial*

The remaining claims proceeded to a bench trial. Following extensive briefing and another hearing, the trial court denied the Foundation's remaining claims, including its due process claims.

Following the entry of judgment, the Foundation filed this timely appeal.

DISCUSSION

In this appeal, the Foundation raises two broad categories of challenges to the trial court's denial of its writ petition—namely, (1) that the City's actions vis-à-vis the project were improper, and (2) the City denied the Foundation due process. We separately examine each category.

I. Validity of the City's Actions

The Foundation proffers four reasons why the City acted improperly vis-à-vis the project: (1) the City Council's modification of the General Plan's land use designation as to the Selma parcel alone violated section 555 of the City's Charter, (2) the Zoning Administrator was wrong to construe Los Angeles

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4 The Foundation subsequently moved to "amend" the trial court's order, which the court denied.

Municipal Code section 12.22.A.18(a) as incorporating R5's use *and density* requirements into parcels with a C4 zone and a Regional Center Commercial land use designation, (3) the City Council did not make the necessary findings before eliminating the D limitation and [Q] qualification on the Sunset and Selma parcels, and (4) the City Council erred in approving the environmental impact report *after* the tract map had already been conditionally approved.

A. *Amendment to the General Plan*

Because a particular parcel's land use designation is defined in the relevant "community plan," which is part of the City's General Plan, the City Council's vote to change the Selma parcel's designation from "Commercial Manufacturing" to "Regional Center Commercial" amended the City's General Plan. The Foundation argues that this ran afoul of section 555 of the City's Charter.

A city's General Plan is its "statement of development policies" that "set[] forth" the City's "objectives, principles, standards, and plan proposals" for, among other things, the use of the City's land. (Gov. Code, § 65302.) Under state law, a city "may amend all *or part* of an adopted general plan." (*Id.*, § 65358, subd. (a), italics added.) However, the City of Los Angeles is organized as a "charter city," which under our state Constitution means that it has near plenary authority over its own municipal affairs such as zoning. (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171 (*Domar*); Cal. Const., art. XI, § 5; *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 511 ["zoning and land use regulations" are "municipal affair[s]"].) With respect to such affairs, a city's charter is controlling—even over contrary state

statutes, such as the statute allowing a city to amend its General Plan "in part." (*Domar*, at p. 170.) Thus, we must ask: Does the City's Charter here—and, specifically, section 555—prohibit the parcel-specific amendment to the General Plan made in this case? We independently review this question (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777 (*Harris*) [de novo review of judgment on the pleadings]; *Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 349-350 (*Don't Cell*) [de novo review of city charter]), and conclude that the answer is "no."

Section 555 of the City's Charter provides, in pertinent part, that "[t]he [City]'s General Plan *may be amended* in its entirety, by subject elements or parts of subject elements, or *by geographic areas, provided that the part or area involved has significant social, economic or physical identity*." (L.A. Charter, § 555, italics added.)

The City Council complied with the relevant (and hence italicized) portion of section 555 of the Charter. The Selma parcel is a "geographic area." And the City explained why that parcel "has significant social, economic or physical identity"—namely, because it is "part of the Palladium's significant physical and social identity," and because amending the General Plan to facilitate the project would allow "for a development that furthers" that "strong" "identity" and would "speak[] to [the area's] participation in the ongoing growth and evolution of Hollywood."

The Foundation does not challenge the adequacy of the City's findings regarding the "significant social, economic or physical identity" of the Selma parcel. Instead, it argues that section 555's reference to amendments by "geographic area"

prohibits any amendment to the General Plan—no matter the significance of that area's identity—unless the amendment pertains to an area that constitutes a "recognized" or "named" "community" or "neighborhood[]." Otherwise, the Foundation argues, the City would be able to modify the General Plan for any old "patch of dirt."

We reject this argument for the simple reason that it would rewrite section 555 by narrowing its authorization of general plan amendments "by geographic areas" to only those amendments "by geographic areas *constituting a recognized or named community or neighborhood*." This is inconsistent with the plain text of section 555. (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 874 ["Where, as here, a statute's plain text is unambiguous, our analysis begins and ends with that text."].) And it is inconsistent with the principle that "[r]estrictions on a charter city's powers may not be implied." (*Taylor v. Crane* (1979) 24 Cal.3d 442, 451.) These same concerns prompted our sister court in *Westsiders Opposed to Overdevelopment v. City of Los Angeles* (2018) 27 Cal.App.5th 1079, 1087-1088 (*Westsiders*) to reject an argument almost identical to the one advanced by the Foundation here. *Westsiders* got it right.

The Foundation offers three subsidiary arguments as to why *Westsiders* got it wrong, but its arguments lack merit.

First, the Foundation contends that section 555's legislative history supports the Foundation's position. However, the legislative history the Foundation points to is a 1968 citizen committee report that preceded the adoption of section 555's predecessor provision in the Charter. That report provided that "community areas with social and economic identity [should] be the minimum size units for general plan study and revision."

Although it is doubtful that the report is part of section 555's legislative history (because it preceded the enactment of section 555's predecessor statute rather than section 555),[5] the report does not help the Foundation's position in any event. That is because the report, at best, supported enactment of section 555's predecessor, but the predecessor statute required that any partial amendments to the General Plan involve "*substantial* geographic areas." Because section 555 dropped the "substantial[ity]" requirement, the legislative history the Foundation proffers in support of that requirement is irrelevant. (See *Alatriste v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656, 670 ["different language in [different] provisions" implies "that the Legislature intended a different meaning in each statute"].)

The Foundation posits that we should overlook the deletion of the word "substantial" because that word was omitted as "no longer needed," but this proffered explanation finds no support whatsoever in any portion of the 58,000-page administrative record cited to us in the Foundation's briefs. For the first time at oral argument, the Foundation pointed to a declaration its current counsel submitted to the City attesting that (1) he was part of a team of attorneys that revised the City Charter in the late 1990s, (2) that team created a "matrix" that purported to track only substantive changes being made to the Charter vis-à-vis the 1969 version of the Charter, and (3) one of the other team members did not include section 555 in the matrix. We decline to read the absence of an entry in a 20-year-old document prepared by an unknown person involved in the drafting of a statute as

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5 The trial court denied the Foundation's request to take judicial notice of this report, and we do the same.

trumping the words of the statute itself. What is more, the 1968 citizen committee report the Foundation also cites evinces a marked antagonism to so-called "spot zoning" (that is, zoning changes targeted to specific parcels) a view that is now so outmoded as almost to be quaint. (*Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302, 1309, 1314 [spot zoning is valid unless not in the public interest]; *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, 1268-1269 [same].)

Second, the Foundation asserts that its construction of section 555 is warranted when that section is viewed in its broader context, and proffers two such contexts. (*San Diegans for Open Government v. City of San Diego* (2018) 31 Cal.App.5th 349, 388 (*San Diegans*) [context matters].) To begin, the Foundation urges that the fundamental purpose of the City's General Plan is to provide a "*comprehensive* declaration of goals, objectives, policies and programs" (L.A. Charter, § 554, italics added; Gov. Code, § 65300), and that piecemeal, parcel-by-parcel changes to the General Plan will result in a haphazard plan. (See *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 120 ["haphazard community growth" and "random development" are undesirable].) This argument ignores section 555's built-in buffer against haphazard, piecemeal amendments to the General Plan—namely, its express requirement that any amendment by a geographic area pertain to an area with "a significant social, economic or physical identity." The Foundation's argument also ignores that the Selma parcel was *itself* a haphazardly designated parcel, and that the General Plan amendment at issue here brought that parcel into harmony with the land use designations of the surrounding parcels.

Further, the Foundation urges that section 557 of the Charter encourages the City Council "to keep neighborhoods and communities intact" when "reviewing or amending" the "general plan areas" into which the City is divided. (L.A. Charter, § 557.) Importing section 557's focus on "neighborhoods" and "communities" into section 555 is inappropriate for two reasons—namely, (1) section 557 deals with the question of how to divide up the City into community plan "areas" rather than how to amend the General Plan's land use designations, and (2) the voters elected not to use section 557's "neighborhood" and "communities" focus when adopting section 555, and we must give effect to these different standards (*People v. Trevino* (2001) 26 Cal.4th 237, 242 ["When the Legislature uses materially different language in statutory provisions addressing the same . . . or related subjects, the normal inference is that the Legislature intended a difference in meaning."]).

Third, the Foundation proffers various dictionary definitions for the words "area" and "region," and asserts that these terms support their view that the minimum "geographic area" for any General Plan amendment must be "vast, extensive, broad or major." As our Supreme Court has observed, however, ""'[t]o seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results.'" [Citation.]" (*State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1295.) Because we can derive the meaning of section 555 from its plain text and from its function in the broader context of City land use planning, we find no warrant for "stitching" together a different meaning from generic dictionary definitions.

B. *Zoning Administrator's construction of Los Angeles Municipal Code section 12.22.A.18(a)*

Because the Sunset parcel and the Selma parcel (once its land use designation was amended) each have a land use designation of Regional Center Commercial and a zone of C4, each falls under the auspices of Los Angeles Municipal Code section 12.22.A.18(a). That provision authorizes, as to such parcels, "[a]ny *use* permitted in the R5 zone" as well as "[a]ny combination of R5 *uses* and the uses permitted in the underlying commercial zone." (L.A. Mun. Code, § 12.22.A.18(a), italics added.) Pursuant to a general grant of authority conferred by the City Charter (see L.A. Charter, § 561) the City's Zoning Administrator in May 2000 construed the provision to import, as to qualifying parcels, not only R5's *uses* but also R5's *lot area requirements* because (1) "the last sentence of" section 12.22.A.18(a) (allowing for a combination of R5 uses and uses permitted in the underlying commercial zone) "implies applying area requirements of R5 zone" and (2) "the original staff report for the ordinance" supported this interpretation. The Foundation argues that the Zoning Administrator's construction of section 12.22.A.18(a) as importing R5's lot area requirements is invalid. This presents the question: Is it? Although we review issues presented in a motion for judgment on the pleadings and issues of statutory construction de novo (*Harris*, *supra*, 59 Cal.4th at p. 777; *Don't Cell*, *supra*, 21 Cal.App.5th at p. 350), we nonetheless defer to the Zoning Administrator's construction of the Municipal Code dealing with zoning, an area in which it has expertise, unless that construction is "plainly wrong" or "clearly erroneous" (*San Diegans*, *supra*, 31 Cal.App.5th at p. 375; *Don't Cell,* at p. 350), especially where, as here, that construction has been longstanding (*Don't Cell*, at p. 350).

We conclude that the Zoning Administrator's construction of Los Angeles Municipal Code section 12.22.A.18(a) is neither "plainly wrong" nor "clearly erroneous." Because that statute expressly authorizes R5 "uses" in parcels that are zoned C4 with a Regional Center Commercial land use designation but is silent as to whether R5's "lot area requirements" are also permissible, it is ambiguous as to whether it authorizes R5's lot area requirements. (E.g., *Dreyer's Grand Ice Cream, Inc. v. County of Alameda* (1986) 178 Cal.App.3d 1174, 1182 ["the failure of the Legislature to regulate [an issue] . . . may be regarded as silence which creates ambiguity in the statute"], superseded by statute on another ground as stated in *Sunrise Retirement Villa v. Dear*, 58 Cal.App.4th 948, 956-957.)

Whether or not the Zoning Administrator could have reasonably concluded that section 12.22.A.18(a) only incorporated R5's "uses," it was not plainly wrong or clearly erroneous in concluding that it incorporated both R5's uses *and* its lot area requirements. That is because section 12.22.A.18(a) expands the universe of possible uses only as to parcels designated as Regional Center Commercial. Parcels so designated, as noted above, are meant to be "typically high-density places" that are transit hubs as well as the home to "commercial malls," "major entertainment and cultural facilities and supporting services." Given this context, the Zoning Administrator acted reasonably in concluding that section 12.22.A.18(a) also meant to import R5's lot area requirement, which allows for higher density development. (See *Don't Cell*, *supra*, 21 Cal.App.5th at p. 349 [in construing an ambiguous statute, courts may consider "the ostensible objects to be achieved"]; *Eidsmore v. RBB, Inc.* (1994) 25 Cal.App.4th 189, 196 [same].) The Zoning Administrator's

construction is also reasonable because it accords with statements in the legislative history underlying section 12.22.A.18 indicating that the statute would "double[]" "residential density" in the areas it reached, a statement true only if the ordinance incorporates R5's lot area requirement. (*Don't Cell*, at p. 349 [in construing ambiguity, legislative history is relevant].)

The Foundation responds with three arguments.

First, it argues that section 12.22.A.18(a)'s plain text incorporates only R5's "uses" and its silence as to R5's "lot area requirements" cannot be viewed as ambiguity. For support, it cites *Yeager v. Blue Cross of California* (2009) 175 Cal.App.4th 1098 (*Yeager*), which distinguished legislative "silence" from "ambiguity." (*Id.* at p. 1103.) *Yeager* is correct that an entity (either a court or an administrative official) construing a statute cannot expand the scope of that statute to reach an issue left unaddressed by the Legislature by treating the statute's silence on that issue as ambiguity. But the question of which lot area requirement applies to parcels in C4 zones and with Regional Center Commercial designations is not an issue that could be left unaddressed—it is an issue that *necessarily has to be addressed*. The Zoning Administrator had to choose which lot area requirement to apply to such parcels, and its choice was not an unreasonable one.

Second, the Foundation contends that the Zoning Administrator's construction of section 12.22.A.18(a) effectively amends that statute, which both renders it void (*Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 505 [regulations that enlarge a statute are void]) and requires a new environmental review under the

California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. (Pub. Resources Code, § 21080, subd. (a) [CEQA applies to "the . . . amendment of zoning ordinances"]). We reject these contentions because, as explained above, the Zoning Administrator's construction of section 12.22.A.18(a) resolved an ambiguity in the statute and did not amend it.

Lastly, and for the first time in its reply brief on appeal, the Foundation asserts that the lot area requirements for parcels with zones R4 and C4 are spelled out in Los Angeles Municipal Code sections 12.11.C.4 and 12.16.C.3, respectively, and those sections (either expressly or by incorporation) provide that any "[e]xceptions" to the lot area requirements will be "provided for in Section 12.22.C." (L.A. Mun. Code, §§ 12.11.C.4, 12.16.C.3.) Because section 12.22.C. does not cross-reference section 12.22.A.18, the Foundation reasons, section 12.22.A.18 cannot be an exception to C4's lot area requirements. The Foundation has waived this assertion by not raising the issue in the administrative proceedings, before the trial court, or in its opening brief. (*Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11 [first time in reply brief]; *People v. Neal* (1993) 19 Cal.App.4th 1114, 1122 [first time on appeal]; *Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1477 (*Harris Transportation*) [first time after administrative proceedings completed].) Even if we ignored this waiver, the Foundation's argument lacks merit because nothing obligated the City Council to consolidate all lot area requirements exceptions in a single subsection; section 12.22.A.18 created an additional exception that is permissibly housed elsewhere in the municipal code.

C. *Elimination of D Limitation and [Q] Qualification*

The City Council has the authority to repeal ordinances containing D limitations or [Q] qualification as it wishes. (See *City of W. Hollywood v. Beverly Towers* (1991) 52 Cal.3d 1184, 1196 ["Local governments planning for the future cannot be unduly hampered by land use decisions of the past."].) However, the Foundation argues that the D limitation and [Q] qualification the City Council eliminated in *this* case were originally adopted as "mitigation measures" under CEQA, and thus can be repealed only if the City Council "state[s] a legitimate reason" for the repeal and "support[s] that statement . . . with substantial evidence" (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359), which the City Council did not do. We must accordingly decide: Were the D limitation and [Q] qualification repealed by the City Council initially adopted as a CEQA mitigation measure? Where, as here, the pertinent facts are undisputed, we independently examine what an ordinance says and whether a public agency complied with its statutory obligations under CEQA. (*Leavitt v. County of Madera* (2004) 123 Cal.App.4th 1502, 1513; *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1199.)

We independently conclude that the D limitation and [Q] qualification on the Sunset parcel and Selma parcel, respectively, were not initially adopted as CEQA mitigation measures. To be sure, the 1990 ordinance adopting the D limitation and [Q] qualification explained that they were adopted for three reasons—namely, to (1) "protect the best interests of, and to assure a development more compatible with, the surrounding property," (2) "secure an appropriate development in harmony

with the General Plan," and (3) "*prevent or mitigate the potential adverse environmental effects of the recommended change*." (Italics added.) This language establishes, at most, that part of the City Council's rationale for enacting the limitation and qualification was to "prevent or mitigate" environmental harm.

But it does *not* establish that the limitation and qualification were *CEQA* mitigation measures. A "mitigation measure" under CEQA is a "measure" that is (1) "include[d]" in the "environmental impact report" (Pub. Resources Code, §§ 21100, subd. (b)(3), 21081, subd. (a)(1)); (2) "proposed to minimize [a proposed project's] significant effects on the environment" (*id*., § 21100, subd. (b)(3)), and (3) "fully enforceable through permit conditions, agreements, or other legally-binding documents," via incorporation in a "plan, policy, regulation, or project design" (Cal. Code Regs., tit. 14, § 15126.4, subd. (2); Pub. Resources Code, § 21081.6, subd. (b)). (See generally *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 240 [same].) Nothing in the 1990 ordinance declares the D limitation or [Q] qualification to be a *CEQA* mitigation measure and, although an environmental impact report was prepared along with the zoning changes effectuated by the 1990 ordinance, the Foundation has not attached that report, which precludes any assessment of whether the D limitation and [Q] qualification were included in that report or proposed as measures to mitigate significant impacts identified in that report. Because it is the Foundation, as the appellant, who bears the burden of proving error (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296), its failure to do so here is fatal to its claim on appeal.

D. *Premature approval of the tract map*

Where, as here, a project warrants an environmental impact report under CEQA, the report must be certified by the "lead [public] agency" evaluating the project *prior to* the agency taking any action to approve the project. (Pub. Resources Code, § 21090, subd. (a); Cal. Code Regs., tit. 14, § 15090, subd. (a).) The reason for this sequencing is straightforward: An environmental impact report is designed "to provide decision makers with information they can use in deciding whether to approve a proposed project" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394, italics omitted), so rendering a decision to approve a proposed project *before* this informational document is completed is to put the cart before the horse.

The Foundation argues that the City did not follow this sequence because the Advisory Agency approved the project (by approving the conditional tract map) *before* the City Council certified the environmental impact report for the project (which, the Foundation continues, only the City Council could do because it was the only "decision-making body" with the power to amend the General Plan (*California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1337-1338 [when project entails amendment of the general plan, only the agency with the power to amend the plan is the "'decision-making body'" for CEQA purposes])). Does this alleged error in sequencing entitle the Foundation to relief?

We conclude the answer is "no."

Errors in following CEQA's procedures require reversal only if the error is "prejudicial." (Pub. Resources Code, § 21005, subd. (b); *Association of Irritated Residents v. County of Madera*

(2003) 107 Cal.App.4th 1383, 1391.) In this case, any error with the Advisory Agency approving the tract map before the City Council certified the environmental impact report was not prejudicial for the simple reason that the Foundation appealed the tract map approval all the way to the City Council, such that the merits of the tract map's approval were pending before the City Council at the same time as the merits of whether to certify the environmental impact report. The City Council went on to approve the tract map (by denying the Foundation's appeal) at the same time it certified the report, thereby eliminating any prejudice flowing from the earlier, out-of-order approval of the tract map. Tellingly, the Foundation makes no effort to articulate how it was prejudiced by the sequencing of approvals; instead, it argues that the sequencing error was prejudicial *per se*. For support, however, the Foundation cites the maxim that the omission of information from an environmental impact report constitutes prejudice. (E.g., *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515.) This is true, but irrelevant because the error in sequencing assumed in this case was not an omission of information;[6] indeed, the Advisory Agency, the Commission and the City Council had the environmental impact report—which, on appeal, the Foundation does not challenge as being

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6 Because the Foundation's argument is aimed more at the City Council's power to delegate certification authority, it is unclear whether this issue qualifies for calendar preference under CEQA. However, because we have placed this matter on calendar within the timeline prescribed for calendar preference (Pub. Resources Code, § 21167.1, subd. (a) [one year from the date of the filing of the appeal]), we deny the Developer's motion for preference as moot.

deficient—before them at each stage of approving the tract map or denying the Foundation's appeal of that map.

II. Denial of Due Process

In the course of the administrative review in proceedings before the Advisory Agency and hearing officer, the Commission and the City Council, the Foundation received notice of each proceeding; appeared and spoke at public hearings before the Advisory Agency and hearing officer, the Commission and the Subcommittee; and submitted written objections totaling over 200 pages exclusive of more than one thousand pages of exhibits (that is, 67 pages to the Commission, 85 pages to the Subcommittee, 27 pages to the City Council, and 23 pages to the redevelopment agency). The Foundation also exercised its statutory right to seek judicial review by filing a petition for a writ of mandamus, filing a motion for judgment on the pleadings and a brief on the merits totaling 129 pages of briefing, appearing at two hearings on the merits, and obtaining two written rulings from the trial court on the merits totaling 47 pages. The Foundation has also filed 148 pages of briefing before this court, not counting its request for judicial notice that we have denied.

The Foundation nevertheless asserts that it was denied due process from "[b]eginning [t]o . . . [e]nd," and seeks writ relief on this ground. (Code Civ. Proc., § 1094.5, subds. (a), (b) [mandamus available for lack of "fair" "hearing"].) More specifically, it alleges that it was denied due process (1) before the Commission because four Commissioners had ex parte communications with the Developer, (2) before the Subcommittee because it allowed the City's representative to speak after it and without the same time limits, and (3) before the City Council because it did not allow it to argue in person and because the

City Council members did not state on the record that they had read and understood the administrative record. We independently review claims that a party was denied a fair hearing during administrative proceedings. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169.)

A. *Due process, generally*

The Foundation, as a lessee and owner of land near the project, has a sufficient interest in the City's consideration of the project to be entitled to procedural due process (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 615; *Scott v. Indian Wells* (1972) 6 Cal.3d 541, 549), although its interest is neither a "fundamental" nor "vested" one (*Bakman v. Department of Transportation* (1979) 99 Cal.App.3d 665, 690 (*Bakman*); *Markley v. City Council* (1982) 131 Cal.App.3d 656, 665-666).

At its core, due process entitles a party to notice and the opportunity to be heard before a neutral decision-maker. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212; *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.) The opportunity to be heard means the "opportunity to refute, test, and explain" "the evidence against" the party's position. (*English v. City of Long Beach* (1950) 35 Cal.2d 155, 158-159.)

What process is due is flexible, not fixed. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 334-335.) In assessing what process is due in administrative proceedings, courts are generally to examine (1) "the private interest that will be affected by the official action," (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and

the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Id.* at p. 335.) More pertinent to the type of administrative proceedings at issue here, the process that is due turns on (1) whether the private interest at issue is fundamental or vested (*Flagstad v. San Mateo* (1957) 156 Cal.App.2d 138, 142 (*Flagstad*)), (2) whether a post-administrative appeal is available (*Machado v. State Water Res. Control Bd.* (2001) 90 Cal.App.4th 720, 725-726), and (3) the degree to which the proceedings are (a) quasi-legislative rather than quasi-judicial (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 992 (*Corona-Norco*)); *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483 (*Nasha*)), and (b) adversarial in nature (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1241 (*BreakZone*) [examining whether proceeding was "judicial"]; *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 300-301 [same]; *Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 Cal.App.4th 1305, 1317, 1319 (*Mathew Zaheri*) [examining whether hearing is "judicial" and "trial-type"]; *Manufactured Home Communities, Inc. v. County of San Luis Obispo* (2008) 167 Cal.App.4th 705, 711-712 [examining whether speakers are "sworn" and subject to "cross-examination"]).

Applying these principles, the process due to a neighbor challenging a project's approval and related zoning changes is far from the process due to litigants in judicial proceedings: (1) Such a neighbor lacks a fundamental or vested right in the proceedings; (2) a writ of mandamus is available to review the administrative proceedings (Code Civ. Proc., § 1094.5); and, (3) although the courts are divided over whether proceedings involving project approvals and zoning are quasi-legislative

(*Corona-Norco*, *supra*, 17 Cal.App.4th at p. 992 [as to zoning]; *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, 1268 [same]; *Del Mar Terrace Conservancy v. City Council* (1992) 10 Cal.App.4th 712, 729 [as to project approval], overruled on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782 [same]; *Wagner Farms, Inc. v. Modesto Irrigation Dist.* (2006) 145 Cal.App.4th 765, 772) or quasi-judicial (*Nasha*, *supra*, 125 Cal.App.4th at p. 483), the proceedings are not adversarial in nature. We must keep these metrics in mind when measuring the merit of the Foundation's due process claims.

B. *Analysis*

1. *Procedures before the Commission*

It is undisputed that four of the seven Commissioners had ex parte communications with the Developer or persons, such as architects, associated with the Developer. It is also undisputed that each of those Commissioners made on the record disclosures as to (1) with whom they spoke, and (2) the subject matter of the discussions. It is further undisputed that the Foundation had the opportunity to respond to the Commission after these disclosures. On these facts, did these ex parte communications deny the Foundation due process? We conclude they did not.

Ex parte communications can offend due process because they can disrupt the neutrality of the decision-maker. In administrative proceedings, neutrality is compromised only if the decision-maker is *actually* biased; the *appearance* of bias is insufficient. (*BreakZone*, *supra*, 81 Cal.App.4th at p. 1236; *Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 222 (*Gai*); *Weinberg v.*

Cedars-Sinai Medical Center (2004) 119 Cal.App.4th 1098, 1115.) A decision-maker is actually biased if shown to have a financial interest in the pending matter or an animus for or against one of the parties, or if there is an unacceptably high probability of such an actual bias. (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 741-742; *Gai,* at p. 222; *BreakZone*, at p. 1238.) The "mere suggestion of bias" is insufficient "to overcome the presumption of integrity and honesty" attaching to administrative decision-makers. (*BreakZone*, at p. 1236.)

An administrative decision-maker's receipt of ex parte communication does not, by itself, create an actual bias or unacceptably high probability of actual bias that destroys the neutrality of the decision-maker. (*BreakZone*, *supra*, 81 Cal.App.4th at p. 1236; *Mathew Zaheri*, *supra* 55 Cal.App.4th at p. 1318.) Instead, an administrative decision-maker who receives such communications may neutralize any bias by (1) "promptly disclos[ing] . . . the substance of the ex parte communication[s]," and (2) giving the opposing party "an opportunity to respond." (*Mathew Zaheri*, at p. 1318; *Flagstad*, *supra*, 156 Cal.App.2d at p. 141-142.)

The four Commissioners who received ex parte communications from the Developer (and from the Foundation or its fellow objector) disclosed the substance of their ex parte communications and thereafter granted the Foundation an opportunity to respond to those disclosures. This was sufficient to dispel any bias arising from the ex parte communications.

The Foundation responds with four arguments.

First, it argues that the Commissioners' disclosures were insufficient because they "only stated generalities." To be sure,

the Commissioners did not recount their conversations with the Developer or its architects verbatim. But they did discuss the specific subject matter of their discussions (such as the "general location" or "historical context" of the Palladium, the architectural design of the proposed towers, the particular amenities they hoped the project would offer the community, and the "jobs-housing balance"). Tellingly, the Foundation does not identify what "specifics" (or categories of "specifics") the Commissioners should have further disclosed.

Second, and relatedly, the Foundation contends that its efforts to articulate those missing "specifics" were stymied by the trial court's erroneous grant of a protective order prohibiting the Foundation from deposing all seven Commissioners. In support of its writ petition, the Foundation sought to depose all seven Commissioners about any ex parte communications. Aside from the overbreadth of the Foundation's deposition notices (because only four Commissioners had such communications), the trial court did not abuse its discretion in granting a protective order because (1) extra-record discovery in writ proceedings is appropriate only if the moving party shows that such discovery "is reasonably calculated to lead to evidence admissible" in such proceedings (*Pomona Valley Hospital Medical Center v. Superior Court of Solano County* (1997) 55 Cal.App.4th 93, 102, italics omitted; *Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 774-775 (*Fairfield*), evidence bearing on decision-makers' mental processes is not admissible (see *Department of Health Services v. Superior Court* (1980) 104 Cal.App.3d 80, 84 [so holding, as to judges]), and (2) extra-record discovery in writ proceedings is not appropriate for evidence—like further information about the ex

parte communications—that "could . . . have been produced" at the hearing (*Fairfield*, at pp. 774-775).

Third, the Foundation asserts that it only had 11 minutes to respond to *both* the Commissioners' disclosures and the merits of the project, whereas the ex parte discussions had no such time limits. This assertion rests on the premise that parties with opposing positions in administrative proceedings involving the approval of projects and zoning changes are entitled to equal time for oral commentary. We reject this premise. The Foundation cites no authority in support of an "equal time" rule (see *Reed v. California Coastal Zone Conservation Com.* (1975) 55 Cal.App.3d 889, 895-896 [rejecting this argument, at least where there was no contemporaneous objection to the time limits]), and grafting such a rule onto such administrative proceedings would have the effect of either turning hearings into day-long affairs or prompting agencies to prohibit all oral commentary whenever permissible; neither result is appetizing.

Lastly, the Foundation cites a March 2017 Executive Directive from the City's Mayor prohibiting Commissioners from "having private meetings or other communications" in "matters in which a decision maker is required to hold a hearing and make a decision by applying the law to particular facts." This Executive Directive does not aid the Foundation's argument because it was promulgated after the administrative proceedings in this case had concluded and does not purport to be retroactive. What is more, the Mayor's efforts to secure a higher level of neutrality than that required by due process does not alter the constitutional minimum of what process is due to a particular type of proceeding.

2. *Procedures before the Subcommittee*

The Foundation argues that it was denied due process at the Subcommittee meeting because the Subcommittee (1) allowed the City's Planner to speak *after* it, and (2) did not hold the Planner to strict time limits. In the Foundation's view, this allowed the Planner to "'sandbag'" the Foundation. We reject this argument. This is not a judicial proceeding where the party with the burden of proof has the right to a rebuttal argument. It is an administrative proceeding where neighbors are permitted to voice their views. Due process does not require that the latter be converted into the former. And, as discussed above, due process does not require that each citizen be granted as much time to speak orally as the City itself.

3. *Proceedings before the City Council*

It is undisputed that the City Council has the power, under the Charter and its rules, to create subcommittees tasked with "report[ing] their findings and recommendations" to the Council. (L.A. Charter, § 242; Rules of the L.A. City Council, rules 68 and 69.) The Foundation argues that, notwithstanding the legality of this division of labor, the City violated its due process rights by (1) not allowing oral argument before the City Council, and (2) not requiring the City Council members to state on the record that they read and "understood" the full administrative record.

We reject these arguments.

The City Council *did* entertain oral comments from the Foundation (and anyone else) when it allowed them to speak before the Subcommittee. There is no due process right to address a decision-maker twice. (See Gov. Code, § 54954.3, subd. (a) [requiring "legislative bod[ies]" to "provide an opportunity for members of the public to [directly] address the . . . body" "before

or during the" "body's consideration of the item"]; *Kramer v. State Board of Accountancy* (1962) 200 Cal.App.2d 163, 175 ["'Due process insists upon the opportunity for a fair trial, not a multiplicity of such opportunities.'"].)

The City Council members are also not required to reaffirm, on the record, that they have read the administrative record and understand it. We presume that public agencies have regularly performed their official duty. (Evid. Code, § 664; *Freeny v. City of San Buenaventura* (2013) 216 Cal.App.4th 1333, 1347.) By insisting that City Council members reaffirm that they did what they were supposed to do, the Foundation would have us indulge in a contrary—and, thus, unlawful—presumption. What is more, where, as here, the decision-making body has lawfully delegated the duty to make findings and recommendations to another entity, it is enough if the body reads the entity's summary of the issue; it need not hear, or even read, *all* of the evidence. (*Allied Compensation Ins. Co. v. Industrial Acci. Com.* (1961) 57 Cal.2d 115, 119-120.) The Foundation points to what it asserts is proof that the City Council members did not read *the whole record*—namely, that the post-Subcommittee filing it made was not posted on the Council's website until *after* the Council voted. However, this proof does not rebut the presumption of regularity (because the Council members are presumed to have read a printed out hard copy) and does not matter anyway (because the Council, as noted above, is not obligated to read everything).

At bottom, the Foundation urges us to transmogrify the administrative proceedings for approving projects and zoning changes into proceedings with all the trappings of a criminal

trial. Doing so would grind such proceedings to a halt. Due process does not demand this result.

DISPOSITION

The judgment for the City is affirmed. The City and the Developer are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P.J.
LUI

_____, J.
CHAVEZ